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Attorneys for Defendant:
MICHAEL TUCKER

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

KIMBERLY ALEKSICK, et al.,)	CASE NO. 08-CV-00059 -J-WMC
)	
Plaintiffs,)	DEFENDANT MICHAEL TUCKER’S
)	ANSWER TO FIRST AMENDED
v.)	COMPLAINT
)	
7-ELEVEN, INC., et al.,)	(Jury Trial Demanded)
)	
Defendants.)	

Defendant Michael Tucker, answering for himself alone, admits, denies, and alleges in answer to the First Amended Complaint herein as follows:

1. Answering paragraph 1 of the First Amended Complaint, Defendant submits that the allegations therein are jurisdictional in nature, to which no answer is required. To the extent that an answer is required, Defendant denies each, all, and every allegation of said paragraph.

2. Answering paragraph 2 of the First Amended Complaint, Defendant admits that venue is proper in this Court.

3. Answering paragraph 3 of the First Amended Complaint, Defendant admits that venue is proper in this Court.

4. Defendant admits the allegations of paragraph 4 of the First Amended Complaint.

5. Defendant admits the allegations of paragraph 5 of the First Amended Complaint.

6. Defendant admits the allegations of paragraph 6 of the First Amended Complaint.

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1 7. Answering paragraph 7 of the First Amended Complaint, Defendant is without
2 sufficient knowledge or information to form a belief as to the truth of its allegations.

3 8. Answering paragraph 8 of the First Amended Complaint, Defendant is without
4 sufficient knowledge or information to form a belief as to the truth of its allegations.

5 9. Answering paragraph 9 of the First Amended Complaint, Defendant is without
6 sufficient knowledge or information to form a belief as to the truth of its allegations.

7 10. Answering paragraph 10 of the Second Amended Complaint, Defendant:

8 a. Admits the allegation in the first sentence that Plaintiff intends to bring
9 this action on behalf of an ascertainable class and a well-defined community of interest among
10 the class members, but denies that Plaintiff is entitled to do so.

11 b. Denies each, all, and every allegation of the remainder of said paragraph.

12 11. Answering the first sentence paragraph 11 of the First Amended Complaint,
13 Defendant admits that Plaintiff has accurately described her theory of liability, but denies the
14 remaining allegations of that sentence. Defendant is without sufficient knowledge or information
15 to form a belief as to the truth of the allegations in the second sentence of said paragraph.

16 12. Answering paragraph 12 of the First Amended Complaint, Defendant denies each,
17 all, and every allegation of said paragraph.

18 13. Answering paragraph 13 of the First Amended Complaint, Defendant denies each,
19 all, and every allegation of said paragraph.

20 14. Answering paragraph 14 of the First Amended Complaint, Defendant is without
21 sufficient knowledge or information to form a belief as to the truth of the allegations as they
22 relate to employees other than his own. Defendant denies each, all, and every allegation of said
23 paragraph as it relates to his current and former employees.

24 15. Answering paragraph 15 of the First Amended Complaint, Defendant is without
25 sufficient knowledge or information to form a belief as to the truth of the allegations as they
26 relate to employees other than his own. Defendant denies each, all, and every allegation of said
27 paragraph as it relates to his current and former employees.

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1 16. Defendant admits that, if established, the size of the proposed class would provide
2 the required numerosity; however, Defendant denies that other grounds for certifying a class of
3 plaintiffs exist and on that basis denies each, every, and all allegation of said paragraph.

4 17. Answering paragraph 17 of the First Amended Complaint, Defendant is without
5 sufficient knowledge or information to form a belief as to the truth of the allegations as they
6 relate to employees other than his own. Defendant denies each, all, and every allegation of said
7 paragraph as it relates to his current and former employees.

8 18. Defendant denies each, all, and every allegation of paragraph 18 of the First
9 Amended Complaint.

10 19. Defendant denies each, all, and every allegation of paragraph 19 of the First
11 Amended Complaint.

12 20. Answering paragraph 20 of the First Amended Complaint, Defendant denies the
13 allegation that Plaintiff's termination was involuntary, and admits the remaining allegations of
14 the first sentence of said paragraph. Defendant denies each, all, and every allegation of the
15 second sentence of said paragraph as they relate to Defendant 7-ELEVEN, INC., but admits said
16 allegations as they relate to Defendant. Defendant is without sufficient knowledge or
17 information to form a belief as to the truth of the allegations in the third sentence of said
18 paragraph. Defendant admits the allegations of the fourth sentence of said paragraph to the
19 extent that they relate to Plaintiff and other employees of Defendant, but is without sufficient
20 knowledge or information to form a belief as to the truth of those allegations as they relate to
21 other potential class members.

22 21. Answering paragraph 21 of the First Amended Complaint, Defendant submits that
23 the first sentence contains legal conclusions to which no answer is required. The second
24 sentence of said paragraph relates to Defendant 7-ELEVEN, INC., and no answer from this
25 answering Defendant is required. Defendant denies each, all, and every allegation contained in
26 the third sentence of said paragraph as it relates to Plaintiff and other employees of answering
27 Defendant, and is without sufficient knowledge or information to form a belief as to the truth of
28 said allegations as they relate to other potential class members. The fourth sentence of said

1 paragraph relates to Defendant 7-ELEVEN, INC., and no answer from this answering Defendant
2 is required. Defendant denies each, all, and every allegation contained in the fifth sentence of
3 said paragraph as it relates to Plaintiff and other employees of answering Defendant, and is
4 without sufficient knowledge or information to form a belief as to the truth of said allegations as
5 they relate to other potential class members. Denies each, all, and every allegation contained in
6 the sixth sentence of said paragraph as it relates to Plaintiff and other employees of answering
7 Defendant, and is without sufficient knowledge or information to form a belief as to the truth of
8 said allegations as they relate to other potential class members.

9 22. Answering paragraph 22 of the First Amended Complaint, Defendant submits that
10 all allegations therein are made against Defendant 7-ELEVEN, INC., and this answering
11 Defendant is not required to answer said allegations.

12 23. Defendant hereby incorporates its responses as set forth in paragraphs 1-22 above
13 as though fully set forth herein.

14 24. Answering paragraph 24 of the First Amended Complaint, Defendant submits that
15 all allegations therein are against Defendant 7-ELEVEN, INC., and this answering Defendant is
16 not required to answer.

17 25. Answering paragraph 25 of the First Amended Complaint, Defendant submits that
18 all allegations therein are against Defendant 7-ELEVEN, INC., and this answering Defendant is
19 not required to answer.

20 26. Answering paragraph 26 of the First Amended Complaint, Defendant submits that
21 all allegations therein are against Defendant 7-ELEVEN, INC., and this answering Defendant is
22 not required to answer.

23 27. Answering paragraph 27 of the First Amended Complaint, Defendant submits that
24 all allegations therein are against Defendant 7-ELEVEN, INC., and this answering Defendant is
25 not required to answer.

26 28. Answering paragraph 28 of the First Amended Complaint, Defendant submits that
27 all allegations therein are against Defendant 7-ELEVEN, INC., and this answering Defendant is
28 not required to answer.

1 29. Answering paragraph 29 of the First Amended Complaint, Defendant submits that
2 all allegations therein are against Defendant 7-ELEVEN, INC., and this answering Defendant is
3 not required to answer.

4 30. Answering paragraph 30 of the First Amended Complaint, Defendant submits that
5 all allegations therein are against Defendant 7-ELEVEN, INC., and this answering Defendant is
6 not required to answer.

7 31. Answering paragraph 31 of the First Amended Complaint, Defendant submits that
8 all allegations therein are against Defendant 7-ELEVEN, INC., and this answering Defendant is
9 not required to answer.

10 32. Answering paragraph 32 of the First Amended Complaint, Defendant submits that
11 all allegations therein are against Defendant 7-ELEVEN, INC., and this answering Defendant is
12 not required to answer.

13 33. Answering paragraph 33 of the First Amended Complaint, Defendant submits that
14 all allegations therein are against Defendant 7-ELEVEN, INC., and this answering Defendant is
15 not required to answer.

16 34. Answering paragraph 34 of the First Amended Complaint, Defendant submits that
17 all allegations therein are against Defendant 7-ELEVEN, INC., and this answering Defendant is
18 not required to answer.

19 35. Answering paragraph 35 of the First Amended Complaint, Defendant submits that
20 all allegations therein are against Defendant 7-ELEVEN, INC., and this answering Defendant is
21 not required to answer.

22 36. Answering paragraph 36 of the First Amended Complaint, Defendant submits that
23 all allegations therein are against Defendant 7-ELEVEN, INC., and this answering Defendant is
24 not required to answer.

25 37. Answering paragraph 37 of the First Amended Complaint, Defendant submits that
26 all allegations therein are against Defendant 7-ELEVEN, INC., and this answering Defendant is
27 not required to answer.

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1 38. Answering paragraph 38 of the First Amended Complaint, Defendant submits that
2 all allegations therein are against Defendant 7-ELEVEN, INC., and this answering Defendant is
3 not required to answer.

4 39. Answering paragraph 39 of the First Amended Complaint, Defendant submits that
5 all allegations therein are against Defendant 7-ELEVEN, INC., and this answering Defendant is
6 not required to answer.

7 40. Answering paragraph 40 of the First Amended Complaint, Defendant submits that
8 all allegations therein are against Defendant 7-ELEVEN, INC., and this answering Defendant is
9 not required to answer.

10 41. Answering paragraph 41 of the First Amended Complaint, Defendant submits that
11 all allegations therein are against Defendant 7-ELEVEN, INC., and this answering Defendant is
12 not required to answer.

13 42. Answering paragraph 42 of the First Amended Complaint, Defendant submits that
14 all allegations therein are against Defendant 7-ELEVEN, INC., and this answering Defendant is
15 not required to answer.

16 43. Answering paragraph 43 of the First Amended Complaint, Defendant submits that
17 all allegations therein are against Defendant 7-ELEVEN, INC., and this answering Defendant is
18 not required to answer.

19 44. Answering paragraph 44 of the First Amended Complaint, Defendant submits that
20 all allegations therein are against Defendant 7-ELEVEN, INC., and this answering Defendant is
21 not required to answer.

22 45. Defendant hereby incorporates by reference paragraphs 1 through 44 above as
23 though fully set forth herein.

24 46. Answering paragraph 46 of the First Amended Complaint, Defendant submits that
25 said paragraph contains statements of law to which no answer is required.

26 47. Answering paragraph 47 of the First Amended Complaint, Defendant submits that
27 said paragraph contains statements of law to which no answer is required.

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1 48. Answering paragraph 48 of the First Amended Complaint, Defendant submits that
2 said paragraph contains statements of law to which no answer is required.

3 49. Answering paragraph 49 of the First Amended Complaint, Defendant submits that
4 said paragraph contains statements of law to which no answer is required.

5 50. Answering paragraph 50 of the First Amended Complaint, Defendant denies each,
6 all, and every allegation thereof as it relates to Plaintiff and other employees of answering
7 Defendant.

8 51. Answering paragraph 51 of the First Amended Complaint, Defendant denies each,
9 all, and every allegation thereof as it relates to Plaintiff and other employees of answering
10 Defendant.

11 52. Answering paragraph 52 of the First Amended Complaint, Defendant submits that
12 said paragraph contains statements of law to which no answer is required.

13 53. Answering paragraph 53 of the First Amended Complaint, Defendant denies each,
14 all, and every allegation thereof as it relates to Plaintiff and other employees of answering
15 Defendant.

16 54. Answering paragraph 54 of the First Amended Complaint, Defendant denies each,
17 all, and every allegation thereof as it relates to this answering Defendant, to Plaintiff, and to other
18 employees of answering Defendant.

19 55. Answering paragraph 55 of the First Amended Complaint, Defendant submits that
20 said paragraph contains statements of law to which no answer is required.

21 56. Answering paragraph 56 of the First Amended Complaint, Defendant denies each,
22 all, and every allegation thereof as it relates to Plaintiff, and to other employees of answering
23 Defendant.

24 57. Answering paragraph 57 of the First Amended Complaint, Defendant submits that
25 said paragraph contains statements of law to which no answer is required.

26 58. Answering paragraph 58 of the First Amended Complaint, Defendant denies each,
27 all, and every allegation thereof as it relates to Plaintiff, and to other employees of answering
28 Defendant.

1 59. Answering paragraph 59 of the First Amended Complaint, Defendant is without
2 sufficient knowledge or information to form a belief as to the truth of the allegations set forth
3 therein.

4 60. Defendant hereby incorporates by reference paragraphs 1 through 59 as though
5 fully set forth herein.

6 61. Answering paragraph 61 of the First Amended Complaint, Defendant admits that
7 Plaintiff has accurately described her theory of liability, but denies each, all, and every allegation
8 contained in said paragraph.

9 62. Answering paragraph 62 of the First Amended Complaint, Defendant submits that
10 said paragraph contains statements of law to which no answer is required.

11 63. Answering paragraph 63 of the First Amended Complaint, Defendant denies each,
12 all, and every allegation contained therein.

13 64. Answering paragraph 64 of the First Amended Complaint, Defendant admits that
14 Plaintiff has accurately described her theory of liability, but denies each, all, and every allegation
15 contained in said paragraph.

16 65. Answering paragraph 65 of the First Amended Complaint, Defendant denies each,
17 all, and every allegation thereof as it relates to this answering Defendant, to Plaintiff, and to other
18 employees of answering Defendant.

19 66. Answering paragraph 66 of the First Amended Complaint, Defendant submits that
20 said paragraph contains statements of law to which no answer is required.

21 67. Answering paragraph 67 of the First Amended Complaint, Defendant admits that
22 Plaintiff has accurately described her theory of liability, but denies each, all, and every allegation
23 contained in said paragraph.

24 68. Answering paragraph 68 of the First Amended Complaint, Defendant denies each,
25 all, and every allegation contained therein as they relate to this answering Defendant.

26 69. Answering paragraph 69 of the First Amended Complaint, Defendant denies each,
27 all, and every allegation contained therein as they relate to this answering Defendant.

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1 70. Answering paragraph 70 of the First Amended Complaint, Defendant denies each,
2 all, and every allegation contained therein as they relate to this answering Defendant.

3 71. Answering paragraph 71 of the First Amended Complaint, Defendant submits that
4 it contains a prayer for relief to which no answer is required.

5 72. Answering paragraph 72 of the First Amended Complaint, Defendant submits that
6 it contains a prayer for relief to which no answer is required.

7 73. Answering paragraph 73 of the First Amended Complaint, Defendant is without
8 sufficient knowledge or information to form a belief as to the truth of the allegations set forth
9 therein.

10 74. Defendant hereby incorporates by reference paragraphs 1 through 73 as though
11 fully set forth herein.

12 75. Answering paragraph 75 of the First Amended Complaint, Defendant submits that
13 all allegations therein are against Defendant 7-ELEVEN, INC., and this answering Defendant is
14 not required to answer.

15 76. Answering paragraph 76 of the First Amended Complaint, Defendant submits that
16 all allegations therein are against Defendant 7-ELEVEN, INC., and this answering Defendant is
17 not required to answer.

18 77. Answering paragraph 77 of the First Amended Complaint, Defendant submits that
19 all allegations therein are against Defendant 7-ELEVEN, INC., and this answering Defendant is
20 not required to answer.

21 78. Answering paragraph 78 of the First Amended Complaint, Defendant submits that
22 all allegations therein are against Defendant 7-ELEVEN, INC., and this answering Defendant is
23 not required to answer.

24 79. Answering paragraph 79 of the First Amended Complaint, Defendant submits that
25 all allegations therein are against Defendant 7-ELEVEN, INC., and this answering Defendant is
26 not required to answer.

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1 80. Answering paragraph 80 of the First Amended Complaint, Defendant submits that
2 all allegations therein are against Defendant 7-ELEVEN, INC., and this answering Defendant is
3 not required to answer.

4 81. Answering paragraph 81 of the First Amended Complaint, Defendant submits that
5 all allegations therein are against Defendant 7-ELEVEN, INC., and this answering Defendant is
6 not required to answer.

7 82. Answering paragraph 82 of the First Amended Complaint, Defendant submits that
8 all allegations therein are against Defendant 7-ELEVEN, INC., and this answering Defendant is
9 not required to answer.

10 83. Answering paragraph 83 of the First Amended Complaint, Defendant submits that
11 all allegations therein are against Defendant 7-ELEVEN, INC., and this answering Defendant is
12 not required to answer.

13 84. Answering paragraph 84 of the First Amended Complaint, Defendant submits that
14 all allegations therein are against Defendant 7-ELEVEN, INC., and this answering Defendant is
15 not required to answer.

16 85. Answering paragraph 85 of the First Amended Complaint, Defendant submits that
17 all allegations therein are against Defendant 7-ELEVEN, INC., and this answering Defendant is
18 not required to answer.

19 86. Answering paragraph 86 of the First Amended Complaint, Defendant submits that
20 all allegations therein are against Defendant 7-ELEVEN, INC., and this answering Defendant is
21 not required to answer.

22 **FIRST AFFIRMATIVE DEFENSE**

23 As a separate and distinct affirmative defense, Defendant alleges that the First Amended
24 Complaint and each cause of action therein fail to state claims upon which relief can be granted.

25 **SECOND AFFIRMATIVE DEFENSE**

26 As a further, separate, and distinct affirmative defense, this answering Defendant alleges
27 that Plaintiff has failed to mitigate damages, and to the extent of this failure to mitigate, any
28 damages awarded to Plaintiff should be reduced accordingly.

THIRD AFFIRMATIVE DEFENSE

As a further, separate, and distinct affirmative defense, this answering Defendant alleges that the Complaint and each cause of action alleged therein is barred by the applicable statute of limitations, including but not limited to Code of Civil Procedure sections 338(a), 340(a), 340(b), 339, and 343; Labor Code section 203; and Business and Professions Code section 17208.

FOURTH AFFIRMATIVE DEFENSE

As a further, separate, and distinct affirmative defense, this answering Defendant alleges that the Complaint and each cause of action alleged therein is barred by Plaintiff's failure to exhaust her administrative remedies.

FIFTH AFFIRMATIVE DEFENSE

As a further, separate and distinct affirmative defense, Defendant alleges that the Plaintiff, as an uninjured private litigant, lacks standing under Business & Professions Code section 17204 to bring this action as a representative plaintiff.

SIXTH AFFIRMATIVE DEFENSE

As a further, separate and distinct affirmative defense, Defendant alleges that the Plaintiff is not a proper class representative.

SEVENTH AFFIRMATIVE DEFENSE

As a further, separate and distinct affirmative defense, Defendant alleges that he at all times acted in a good faith belief that he was in conformity with all applicable Labor Code and regulatory requirements, Wage Orders, and policies and procedures of the Industrial Welfare Commission, the Division of Labor Standards Enforcement, and the Labor Commissioner.

EIGHTH AFFIRMATIVE DEFENSE

As a further, separate and distinct affirmative defense to Plaintiff's Complaint, Defendant alleges that the Complaint and the purported causes of action are barred by the doctrine that no one can take advantage of one's own wrong.

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NINTH AFFIRMATIVE DEFENSE

As a further, separate and distinct affirmative defense, Defendant alleges that the Complaint and the causes of action alleged therein are not suitable for treatment as a class action, because, among other reasons, (1) Plaintiff has not identified an ascertainable class, (2) Plaintiff is not a proper class representative, and (3) questions of law and fact affecting individual class members predominate over such questions common to the class.

TENTH AFFIRMATIVE DEFENSE

As a further, separate and distinct affirmative defense, Defendant alleges that Plaintiff's damages, if any, must be offset by amounts due to Defendant from Plaintiff.

ELEVENTH AFFIRMATIVE DEFENSE

As a further, separate and distinct affirmative defense, Defendant alleges that Plaintiff's damages are uncertain and speculative, and therefore not recoverable herein.

TWELFTH AFFIRMATIVE DEFENSE

As a further, separate and distinct affirmative defense, Defendant alleges that punitive and/or exemplary damages are not available to Plaintiff under the causes of action alleged; and further alleges that even if such damages are available, Plaintiff is not entitled to such damages because Defendant acted at all times in good faith and without fraud, oppression, or malice.

THIRTEENTH AFFIRMATIVE DEFENSE

As a further, separate and distinct affirmative defense, Defendant alleges that the Complaint, and each cause of action therein, are barred because Plaintiff has waived the right by her conduct and actions to assert each of the claims alleged therein.

FOURTEENTH AFFIRMATIVE DEFENSE

As a further, separate and distinct affirmative defense, Defendant alleges that Plaintiff's Complaint and each of the causes of action therein are barred because Plaintiff is estopped from asserting each of the claims therein.

FIFTEENTH AFFIRMATIVE DEFENSE

As a further, separate and distinct affirmative defense, Defendant alleges that Plaintiff is barred from recovery on any cause of action under the doctrine of "unclean hands."

WHEREFORE, Defendant prays judgment in its favor and against Plaintiff as follows:

(1) That Plaintiff take nothing by way of her Complaint and the same be dismissed against Defendant;

(2) That in the event the Plaintiff recover judgment against Defendant, any liability and damages required to be paid by Defendant be limited to the percentage of fault actually attributed to Defendant;

(3) That Defendant be awarded his costs of suit incurred in this action;

(4) That the Court deny class certification; and,

(5) For such other further relief as the Court may deem just and proper.

Dated: January 17, 2008

BACALSKI, OTTOSON & DUBÉ LLP

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